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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91197038
Party	Plaintiff Cherokee Nation; and Cherokee Nation Entertainment, L.L.C.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**CHEROKEE NATION, a federally
recognized Indian tribe, and CHEROKEE
NATION ENTERTAINMENT, L.L.C.,**

Opposers,

v.

Opposition No. 91197038

SONJA TAYLOR,

Applicant.

**OPPOSERS, CHEROKEE NATION AND CHEROKEE NATION ENTERTAINMENT,
LLC'S RESPONSE TO APPLICANT'S MOTION FOR EXTENSION OF TIME**

Opposers, Cherokee Nation ("Nation") and Cherokee Nation Entertainment, L.L.C. ("CNE") (collectively, "Opposers"), respectfully submit their response to Applicant's Motion for Extension of Discovery and Reset of Dates (the "Motion to Extend"). As set forth in greater detail below, Opposers request that the Motion to Extend be denied:

1. Opposers filed their Notice of Opposition on October 20, 2010. On November 29, 2010, Applicant sought an extension of time to file her Answer to the Notice of Opposition. Opposers did not oppose Applicant's request and, on December 14, 2010, the Trademark Trial and Appeal Board (the "Board") granted Applicant additional time to answer. Applicant filed her Answer on January 12, 2011.

2. On March 16, 2011, after conducting the conference required by Fed. R. Civ. P. 26(f) and serving their initial disclosures, Opposers served on Applicant their First Sets of Interrogatories, Requests for Production of Documents, and Requests for Admissions (the "Discovery Requests"). Pursuant to Fed. R. Civ. P. 33(b)(2), 34(b)(2)(A), 36(a)(3), and

T.B.M.P. § 403.03, Applicant's responses to the Discovery Requests were due on or before April 21, 2011.

3. To date, Applicant has failed to respond to Opposers' Discovery Requests. Applicant's responses to the Discovery Requests are more than three (3) months overdue. As evidenced by Opposers' consent to permit Applicant to file her Answer out of time, Opposers have exhibited a willingness to cooperate with Applicant in this proceeding. However, at no time did Applicant contact counsel for Opposers to request additional time to respond to Opposers' Discovery Requests or complain that the Discovery Requests were too onerous.

4. Notwithstanding her conclusory, unsupported assertions regarding the alleged volume and complexity of Opposer Cherokee Nation's Discovery Requests,¹ Applicant has given no reason or explanation for the failure to timely respond to Opposers' Discovery Requests. Applicant has therefore failed to show good cause or demonstrate any excusable neglect for her failure to timely respond to discovery. In the absence of such a showing, no enlargement of time is warranted. See T.B.M.P. § 509.01(a).

5. Additionally, T.B.M.P. § 403.05 instructs litigants to initiate discovery early to allow time for "follow-up" discovery and to facilitate the introduction of produced documents. For this reason, Opposers commenced written discovery shortly after the opening of the discovery period. Applicant has, until now, completely ignored Opposers' Discovery Requests.

¹ Applicant's Motion to Extend seeks only to enlarge the time by which to respond to Opposer, Cherokee Nation's, interrogatories and request for production. The Motion to Extend is silent regarding the discovery requests proffered by Opposer, Cherokee Nation Enterprises, LLC, to which Applicant has likewise failed to respond.

6. Although she has made no effort to comply with her discovery obligations in the more than four (4) months Opposers' Discovery Requests have been outstanding, Applicant now seeks a 90-day enlargement of time by which to respond to Opposer, Cherokee Nation's, interrogatories and requests for production. If that request is granted, Applicant's responses will not be due until after the discovery period has closed and Opposers' deadlines to make its expert disclosures and pretrial disclosures have passed.² Thus, Applicant's Motion to Extend effectively seeks to preclude Opposer, Cherokee Nation, from conducting any follow-up discovery and severely prejudices Opposer's ability to facilitate the introduction at trial of any materials Applicant might produce in response to the Discovery Requests even though Opposers diligently initiated discovery early in the case, as contemplated by T.B.M.P. § 403.05.

7. Based upon the foregoing, Opposers assert that no good cause or excusable neglect alleged or shown exists for the requested enlargement of time. Moreover, Applicant's request to enlarge the time by which her responses to Opposer Cherokee Nation's interrogatories and document requests are due would unfairly prejudice Opposers.³ For these reasons, Applicant's Motion to Extend should be denied.

² Pursuant to the Board's Order dated December 14, 2010, the discovery period in this proceeding closes on August 13, 2011. The expert disclosure deadline and Opposers' pretrial disclosure deadline are July 14, 2011 and September 27, 2011, respectively.

³ It should be noted that the Motion to Extend is silent with regard to Opposers' First Sets of Requests for Admissions to Applicant. Applicant has filed no motion to withdraw or amend her admissions pursuant to Fed. R. Civ. P. 36(b) nor does she seek an enlargement of the time by which she was required to respond to Opposers' Requests for Admissions. Pursuant to T.B.M.P. §§ 407.03(a), 407.04 and Fed. R. Civ. P. 36(a)(3), Opposers' Requests for Admissions are deemed admitted.

8. Finally, Opposers note that on July 26, 2011, Opposers filed their Motion for Summary Judgment relying, in part, upon facts admitted by Applicant. Opposers' Motion for Summary Judgment, if granted, will be dispositive of this proceeding.

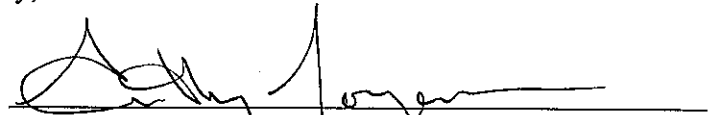
9. Considering the current procedural posture of this Opposition, Opposers suggest that the Board deny the Motion to Extend and suspend this proceeding pursuant to T.B.M.P. § 528.03 and 37 C.F.R. § 2.127(d) pending determination of Opposers' Motion for Summary Judgment. In the event the Board's resolution of Opposers' Motion for Summary Judgment does not dispose of the proceeding in its entirety, the Board should issue an order resuming the proceeding and resetting all disclosure, discovery and trial dates. In that event, Opposers would likely not oppose a request by Applicant for additional time to respond to Opposers' First Sets of Interrogatories and First Sets of Requests for Production of Documents provided that Opposers are given at least 180 days from the service of those responses to conduct additional discovery, make appropriate disclosures and otherwise prepare for trial.⁴

CONCLUSION

Wherefore, Opposers respectfully request the Board deny Applicant's Motion to Extend and suspend this proceeding pending determination of Opposer's Motion for Summary Judgment.

⁴ As mentioned above, Applicant's responses to Opposers' Discovery Requests were approximately 90 days past due when she filed her Motion to Extend seeking an additional 90 days. If the Board grants Applicant's requested extension, Opposers should, in fairness, be entitled to the benefit of that entire 180-day period within which to conduct follow-up discovery, make appropriate disclosures, and otherwise prepare for trial particularly where, as here, Opposers initiated discovery early for precisely those reasons.

Respectfully submitted this 27th day of July, 2011.



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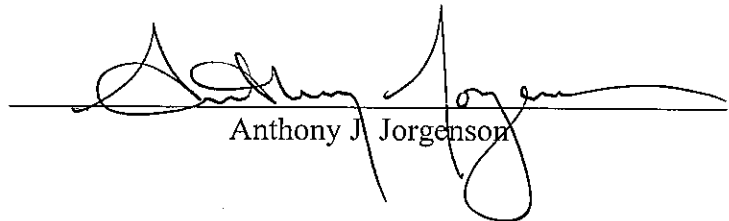
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ENTERTAINMENT, L.L.C.**

CERTIFICATE OF TRANSMISSION

I, the undersigned, do hereby certify that this correspondence is being electronically transmitted via ESTTA to the United States Patent and Trademark Office on this 27th day of July, 2011.

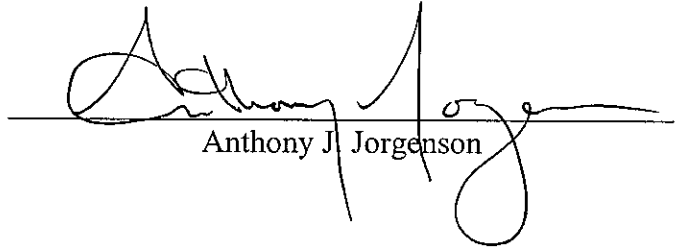


Anthony J. Jorgenson

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 27th day of July, 2011, a true and correct copy of the above and foregoing OPPOSERS, CHEROKEE NATION AND CHEROKEE NATION ENTERTAINMENT, LLC'S RESPONSE TO APPLICANT'S MOTION FOR EXTENSION OF TIME was served by first class mail, proper postage prepaid, upon Applicant at the following address:

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